

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re : Case No. 10-58583
George A. Bavelis, :
Debtor. : Chapter 11
: Judge John E. Hoffman, Jr.

**MOTION OF GEORGE A. BAVELIS, REORGANIZED DEBTOR, FOR AN ORDER
AUTHORIZING THE RELEASE AND DISTRIBUTION OF CERTAIN FUNDS HELD
ON DEPOSIT BY THE CLERK OF COURTS TO BNK REAL ESTATE, LLC AND
NOTICE THEREOF**

Now comes George A. Bavelis, reorganized debtor, (“Mr. Bavelis”), by and through his undersigned counsel, and hereby moves the Court for an Order authorizing the release and distribution of certain funds currently held on deposit by the Clerk of Courts for the United States Bankruptcy Court for the Southern District of Ohio (the “Clerk of Court”) to BNK Real Estate, LLC (“BNK”). A copy of a proposed Order is attached hereto as Exhibit A. A memorandum in support of this Motion follows.

Respectfully submitted,

/s/ Richard K. Stovall

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Counsel for George A. Bavelis, Reorganized Debtor

MEMORANDUM IN SUPPORT

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order of Reference entered in this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The matters raised herein constitute core proceedings pursuant to 28 U.S.C. § 157(b)(2).

Background

2. On July 20, 2010, (the “Petition Date”), Mr. Bavelis filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). On December 12, 2014, the Court entered its *Amended Order Confirming Fifth Amended Plan of Reorganization for George A. Bavelis, Debtor and Debtor in Possession, as Modified* [Doc. No. 817] (the “Confirmation Order”). From the Petition Date through entry of the Confirmation Order, Mr. Bavelis operated as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner was appointed in his Case.

3. On May 2, 2014, Mr. Bavelis filed his *Motion of George A. Bavelis, Debtor and Debtor in Possession, for the Entry of an Order Approving Compromise of Claims By and Among George A Bavelis, TM Debt Acquisitions, LLC, Rab Masroor, Financial Lending Services, LLC, Mahammad Qureshi, Qureshi Family, LLC, BNK Real Estate, LLC, and Bavelis Family, LLC and Settlement Agreement Pursuant to Bankruptcy Rule 9019(a)* [Doc. No. 658] (“Motion to Compromise”), requesting the Court approve the *Settlement Agreement* (the “Settlement Agreement”) which resolves those claims asserted by and among Mr. Bavelis, Mahammad Qureshi (“Qureshi”), Qureshi-related entities, including BNK Real Estate, LLC (“BNK”), and certain other parties in the adversary proceeding styled as *George A. Bavelis v. Ted Doukas, et. al*, Case No. 10-ap-02508 (the “Adversary Proceeding”). A copy of the Settlement Agreement is attached hereto as Exhibit B. As set forth in detail in the Motion to

Compromise, the Settlement Agreement provided, *inter alia*, (i) a mechanism for the parties to proceed with a settlement with Evergreen Eldercare (“Evergreen”) relative to that certain note and mortgage (the “Evergreen Loan”) in favor of GMAQ, LLC (“GMAQ”), and the contemplated pay-off of the Evergreen Loan to GMAQ (ii) the recovery of a certain loan made by Mr. Bavelis (the “Bavelis Loan”), and (iii) the recovery of certain advances made by BNK to GMAQ related to the Evergreen Loan in the total amount of \$240,000.00 (the “BNK Advances”). [See Exhibit B, ¶¶ 2, 6 & 12].

4. On July 18, 2014, the Court entered an Order approving the Motion to Compromise. [See Doc. No. 708] (the “Order Approving Compromise”).¹

5. On July 31, 2014, Mr. Bavelis filed his *Fifth Amended Plan of Reorganization for George A. Bavelis, Debtor and Debtor in Possession*, [Doc. No. 712], which was modified by the *First Modification to Fifth Amended Plan of Reorganization for George A. Bavelis, Debtor and Debtor in Possession* [Doc. No. 808] (collectively, the “Plan”). As referenced above, the Court confirmed the Plan through its entry of the Confirmation Order on December 12, 2014.

6. The refinance of the Evergreen Loan and the subsequent pay-off to GMAQ ran into unexpected delays as a result of Evergreen’s conduct, and did not occur within the thirty (30) day period contemplated by the Settlement Agreement. Fortunately, Mr. Bavelis was eventually able to secure a resolution of such matter, and on May 20, 2015, Evergreen made a payment of \$2,307,027.78 to GMAQ, which funds were received by the Clerk of Court on or about May 26, 2015, and deposited into the Court Registry. This payment to GMAQ satisfied the Evergreen Loan in full.

¹ RPM Recovery Inc., Nemesis of LI Corp., and Ted Doukas filed a *Limited Objection of RPM Recovery Inc., Nemesis of LI Corp., and Ted Doukas to Motion of George A. Bavelis, Debtor and Debtor in Possession, for the Entry of an Order Approving Compromise of Claims By and Among George A. Bavelis, TM Debt Acquisitions, LLC, RAB Masroor, Financial Lending Services, LLC, Mahammad Qureshi, Qureshi Family, LLC, BNK Real Estate, LLC, and Bavelis Family LLC, and Settlement Agreement Pursuant to Bankruptcy Rule 9019(a)* [Doc. No. 678], which was overruled by the Court following an evidentiary hearing held on July 16, 2014.

7. Following the refinance of the Evergreen Loan, and subsequent payoff by Evergreen to GMAQ, on May 26, 2015, Mr. Bavelis filed the *Motion of George A. Bavelis, Reorganized Debtor, for an Order Authorizing the Release and Distribution of Certain Funds Held on Deposit by the Clerk of Courts and Notice Thereof* [Doc. No. 856] (the “Motion to Release Funds to Bavelis”). In the Motion to Release Funds to Bavelis, and consistent with the Settlement Agreement and the Court’s Order Approving Compromise, Mr. Bavelis requested the Court authorize the Clerk of Court to release sufficient funds to Mr. Bavelis to satisfy the outstanding balance of the Bavelis Loan. The Court granted the Motion to Release Funds to Bavelis by Order entered July 2, 2015 [Doc. No. 866], and shortly thereafter, the Clerk of Court issued a check to Mr. Bavelis in the amount of \$1,716,451.95, which satisfied the Bavelis Loan in full.

8. Upon information and belief, the balance of funds held in the Court Registry, comprised solely of GMAQ funds, is approximately \$1,463,803.38. This amount consists entirely of the remaining proceeds from the Evergreen Loan, proceeds from the settlement of certain claims against Atlantic Title, and proceeds from the sale of certain property in Florida, commonly referred to as the “O’Brien Lots” (collectively, the “Court Registry Funds”).

Relief Requested

9. As set forth in the Settlement Agreement, BNK advanced approximately \$240,000 in pursuit of the collection of monies due and owing to BNK and GMAQ by Evergreen, and Mr. Bavelis agreed that BNK is entitled to recover the BNK Advances from the Court Registry Funds, following entry of an Order by this Court approving same. [See Exhibit B, ¶6].

10. Consistent with the Settlement Agreement, Mr. Bavelis requests that \$240,000 of the Court Registry Funds be disbursed to Hyman & Lewis, PLLC for the benefit of BNK, in full satisfaction of the BNK Advances. Mr. Bavelis submits that this distribution is proper in light of

the parties' intentions as encompassed in the Settlement Agreement, and this Court's Order Approving Compromise. [See Doc. No. 708].

WHEREFORE, George A. Bavelis, reorganized debtor, respectfully requests that the Court (i) enter an Order substantially in the form attached hereto as Exhibit A, ordering the Clerk of Court to disburse \$240,000 from the Court Registry Funds to Hyman & Lewis, PLLC for the benefit of BNK; and (ii) grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Richard K. Stovall

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Counsel for George A. Bavelis, Reorganized Debtor

**NOTICE OF MOTION OF GEORGE A. BAVELIS, REORGANIZED DEBTOR, FOR
AN ORDER AUTHORIZING THE RELEASE AND DISTRIBUTION OF CERTAIN
FUNDS HELD ON DEPOSIT BY THE CLERK OF COURTS TO BNK REAL ESTATE,
LLC AND NOTICE THEREOF**

Notice is hereby given that George A. Bavelis, reorganized debtor, has filed a motion seeking an order releasing and distributing funds held on deposit by the Clerk of Court (the "Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to grant the relief sought in the Motion, then on or before **twenty one (21) days from the date set forth in the certificate of service of the Motion**, you must file with the Court a response explaining your position by mailing your response by regular U.S. mail to U.S. Bankruptcy Court, Southern District of Ohio, Columbus Divisional Offices, 170 North High Street, Columbus, Ohio 43215 OR your attorney must file a response using the Court's ECF System.

The Court must **receive** your response on or before the above date.

You must also send a copy of your response either by (1) the Court's ECF System or (2) regular U.S. mail to Richard K. Stovall, Allen Kuehnle Stovall & Neuman LLP, 17 South High Street, Suite 1220, Columbus, Ohio 43215.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief without further notice or hearing.

/s/ Richard K. Stovall

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Counsel for George A. Bavelis, Reorganized Debtor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing *Motion of George A. Bavelis, Reorganized Debtor, for an Order Authorizing the Release and Distribution of Certain Funds Held on Deposit by the Clerk of Courts to BNK Real Estate, LLC and Notice Thereof* was served via ECF Transmission and/or via regular U.S. mail, postage pre-paid, on the 18th day of September, 2015 on the following parties or their counsel as reflected on the service list below.

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case:

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Manual Notice List

The following is the list of parties who are not on the list to receive email notice/service for this case (who therefore require manual noticing/service):

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